

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**KIEWIT CONSTRUCTION COMPANY,**

**Plaintiff,**

**VS.**

**CAPITAL ELECTRIC  
CONSTRUCTION, COMPANY, INC.,**

**Defendant.**

**CASE NO. 8:04CV148**

## ORDER

This matter is before the Court on the Motion for an Enlargement of Time to Respond to the Plaintiff's Motion for Summary Judgment filed by the Defendant Capital Electric Construction Company, Inc. (Filing No. 53), which was filed on Friday, April 15, 2005. Defendant seeks a 30-day extension of time. Absent an extension, the Defendant's response to the summary judgment motion is due today. With the motion, the Defendant filed a second document, "Suggestions in Support of Motion for Enlargement of Time." (Filing No. 54). The document is not an affidavit, and it states generally that the Defendant needs to "depone additional witnesses," and "is awaiting the production of documents by a non-party," though it does not identify the witnesses it seeks to depose, the substance of the testimony, or the dates by which the production of documents from the non-party is expected. (*Id.* at ¶¶ 6 and 8).

The Plaintiff, Kiewit Construction Company, objects to any extension of time because the Defendant failed to comply with Fed. R. Civ. P. 56(f). I agree. The Defendant's motion and its "suggestions" do not comply with Rule 56(f). In the Defendant's response to the Plaintiff's brief, Defendant characterizes its motion as one brought under Rule 6(b) -- "merely a procedural request for additional time in which to file its response."

(Filing No. 56 at p.1). The Defendant's attempt to avoid the more specific provision of Rule 56(f) by invoking the more general provision of Rule 6(b) must fail, particularly given the Defendant's acknowledgment that its counsel is currently reviewing documents that have been produced pursuant to discovery requests. (Filing No. 56 at p.2).

While I shall grant the Defendant an extension of time to complete its review of documents and prepare its response, the extension shall be limited. Accordingly,

IT IS ORDERED:

Defendant's Motion for an Extension of Time (Filing No. 53) is granted as follows: Defendant shall submit its response to the Plaintiff's Motion for Summary Judgment, including its brief and index of evidence, if any, on or before Friday, April 22, 2005.

Dated this 18<sup>th</sup> day of April, 2005.

BY THE COURT:

s/Laurie Smith Camp  
Laurie Smith Camp  
United States District Judge